



Mayer Brown LLP
350 South Grand Avenue
25th Floor
Los Angeles, CA 90071-1503
United States of America

T: +1 213 229 9500
F: +1 213 625 0248

mayerbrown.com

April 1, 2022

VIA ECF

Hon. Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan Courthouse
Southern District of New York
500 Pearl St.
New York, New York 10007

Keri E. Borders
Partner

T: +1 213 229 5143
F: +1 213 576 8122
KBorders@mayerbrown.com

Re: ***In re Kind LLC Healthy and All Natural Litig., No. 1:15-md-2645-NRB***
In re Kind LLC Healthy and All Natural Litig., No. 1:15-mc-2645-NRB

Dear Judge Buchwald:

Pursuant to Your Honor's Individual Practices § 2(H), Your Honor's Standing Order, the Southern District of New York's Local Rules, and Section 6 of the Southern District's Electronic Case Filing Rules & Instructions, Defendant KIND LLC ("KIND") respectfully submits this request to file under seal an unredacted version of KIND's Response to Plaintiffs' Statement of Genuine Issues of Fact. The Viewing Level for this document will be for "Selected Parties." KIND also requests to file a redacted version of the same document as a publicly available filing.

In accordance with the Individual Practices of this Court, an unredacted version of KIND's Response to Plaintiffs' Statement of Genuine Issues of Fact—along with a redacted version of this document—is being filed contemporaneously with this request. Copies of this letter and the unredacted and redacted version of the document shall be contemporaneously mailed to Your Honor.

In this action, the parties are subject to a Stipulated Protective Order approved by Judge William Pauley. ECF No. 158. Under the terms of that Order, a party may designate as "Confidential" or "Highly Confidential" material or information that the party "reasonably and in good faith believes constitutes and reveals confidential trade secrets, proprietary business information, and/or non-public personal, client, or customer information concerning individuals or other entities" (*id.* ¶ 2.3), provided that the designating party "shall take care to limit any such designation to specific material that qualifies under the appropriate standards." *Id.* ¶ 5.1. Properly designated Confidential or Highly Confidential material may not be disclosed publicly under the terms of the Order (*id.* ¶¶ 7.1-7.3) and must instead be filed under seal pursuant to Your Honor's Individual Practices. *Id.* ¶ 12.3.

The information that KIND seeks to file under seal, and which has been designated as "Highly Confidential – Attorneys' Eyes Only" under the terms of the Stipulated Protective Order, are the portions of the response which reference exhibits which contain highly confidential, proprietary, and trade secret information regarding ingredients of KIND products

Hon. Naomi Reice Buchwald
Page 2

and their properties, internal procedures for manufacture of products with those ingredients, manufacture and sourcing information, and supplier information.

Federal Rule of Civil Procedure 26(c) authorizes district courts, upon a showing of good cause, to “require that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.” Fed. R. Civ. P. 26(c)(1)(H). “Documents may be sealed if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (internal quotations and alterations omitted).

Here, KIND seeks leave to publicly file this response with all references to Highly Confidential information redacted, and to file a wholly unredacted version of this document under seal. This request is narrowly tailored in that it relates only to information from documents designated by KIND as Highly Confidential pursuant to the Stipulated Protective Order and will allow portions of the response to be sealed only to the extent necessary to protect KIND’s business interests and commercially sensitive business information.

This Court has previously granted KIND’s and plaintiffs’ request to file documents with virtually the identical information under seal. *See* ECF Nos. 262, 289.

Based on the foregoing, KIND respectfully requests that: (i) the Court approve this request to file a document under seal pursuant to Your Honor’s Individual Practices § 2(H); (ii) the redacted version of KIND’s Response to Plaintiffs’ Statement of Genuine Issues of Fact be accepted as the public version to be electronically filed; and (iii) that the Court grant KIND leave to file an unredacted version of the same under seal.

Respectfully submitted,


/s/ **Keri E. Borders**

Keri E. Borders
Partner

cc: All Counsel of Record via ECF

Application granted.

SO ORDERED.


NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
April 4, 2022